IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.6723 of 2006
Date of Decision: 30.8.2007

Sunil Kumar .....Petitioner

Vs.

State of Haryana and others ...Respondents

Present : Mr.Arun Jain, Advocate for the petitioner.
Mr.Ashish Kapoor, Addl. A.G. Haryana.

...

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

****

1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

****

RAJIVE BHALLA, J

Prayer in this writ petition is for issuance of a writ in the nature of Certiorari/Mandamus or such other writ, order or direction, declaring the notifications dated 19.5.2003 and 14.5.2004 issued under Sections 4 and 6 respectively of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') as illegal, arbitrary and malafide.

On 19.5.2003, the State of Haryana issued a notification, under Section 4 of the Act, proposing to acquire 74.67 acres of land, including the land owned and possessed by the petitioner and his co-sharers, situated in Khasra Nos.8408 and 8409 for commercial and residential purposes. The

petitioner allegedly filed objections dated 4.6.2003 under Section 5-A of the Act., whereafter, a declaration under Section 6 of the Act dated 14.5.2004 came to be notified.

Counsel for the petitioner contends that after the issuance of notification under Section 6, the respondents have released 49.16 marlas of vacant land from Khasra No.8408. The petitioner's built up area measuring 1 kanal,falling in this khasra no. and shown in red in the site plan Annexure P-5, has however not been released. It is contended that as vacant area in possession of the petitioner's co-sharers has been released, there is no justification for acquiring the constructed area owned and possessed by the petitioner. It is also asserted that prior to the issuance of notification under Section 6 of the Act, no opportunity of hearing, as required by Section 5-A (2) of the Act was afforded to the petitioner. It is further submitted that the petitioner is running a dhaba and a tea stall. As per policy of the State of Haryana, constructed land has to be released and as the petitioner's land, measuring 1 kanal, would not affect the execution of scheme of acquisition, in any manner, the present writ petition be allowed.

Counsel for the respondents, admits that the petitioner filed objections under Section 5-A of the Act through, Sh.Sunil Kumar Sardana, Advocate. It is, however, asserted that the Land Acquisition Collector, issued a notice, for hearing of the objections to the petitioner through his Advocate. The notice was received by an assistant of the advocate but neither the petitioner not his advocate appeared before the Collector. The petitioner's grievance that no opportunity of hearing was afforded is, thus, incorrect. It is further submitted that the petitioner is a co-sharer in Khasra No.8408 to the extent of 31/193 share out of which, 49 Kanals and 16

Marlas have been released. As regards the construction raised by the petitioner, it is asserted that its release is not feasible, as it is integral to the successful execution of the scheme of acquisition. The constructed land abuts the road and the green belt. It is further submitted that the land in dispute is being acquired for a public purpose and is required for widening of roads, provision of service lanes and green belt and, therefore, can not be released from acquisition. Vacant land was released, as it was found unnecessary for a successful execution of scheme. It is further submitted that the impugned notifications have already been upheld by this Court in CWP No.7334 of 2006 and 6910 of 2006.

We have heard learned counsel for the parties and perused the paper book.

At the outset, it would be appropriate to note that the legality of the notifications issued under Sections 4 and 6 of the Act have already been upheld in CWP No.7334 of 2006 and 6910 of 2006 vide orders dated 27.7.2007 and 22.5.2007. However, as counsel for the petitioner asserts that the grounds raised in the present petition are different from those adjudicated in the aforementioned writ petitions, we have heard counsel for the parties on merits.

The first contention, namely; the failure of the respondents, to afford an opportunity of hearing, as envisaged by Section 5-A(2) of the Act merits rejection. Paragraph 4 of the reply, filed by the Land Acquisition Collector, Urban Estate Department,Haryana, reads as follows :-

> "That the notices u/s 9 of the Act were issued on 28.3.2006 to the land owners for their claims. After considering the individual claims on 12.5.2005, the award for the acquisition of the above said total land 55.53 acres was announced vide award

No.13 dated 12.5.2006 of Village Hisar, Tehsil and Distt.Hisar. The land owners including the petitioner have been awarded fair and adequate compensation as per prevailing market price and considering at length all the relevant factors, situations and location of the acquired land further on the recommendation of the Divisional level Evaluation Committee headed by the Commissioner of Hisar Division Hisar in lieu of their land. Possession has been handed over to Estate Officer, HUDA Hisar on 12.5.2006. Entry to this effect has been made in the Rapat Rojnamcha Patwari Halqa Hisar.

The petitioner has not controverted the above averments. It is, thus, apparent that a notice, as envisaged by Section 5-A(2) of the Act, calling upon the petitioner, to appear before the Land Acquisition Collector, was served. The petitioner failed to appear before the Collector, leading to the rejection of his objections. We find no reasons to doubt the correctness of the averments in the reply reproduced herein above.

Another contention, namely; that 49 Kanals 16 Marlas of vacant land has been released, out of Khasra No.8408, whereas the petitioner's constructed land measuring about 1 kanal situated in the same khasra no. has not been released, does not merit acceptance. As noticed in the narrative of facts, the petitioner is a co-sharer in Khasra No.8408 to the extent of 31/193 share. Thus, for the petitioner to contend that land belonging to him has not been released, is incorrect. The refusal to release constructed portion, in the petitioner's possession has been successfully explained by the respondents. In the reply to the writ petition, it is pleaded

that constructed portion is required for the purpose of widening of roads, provisions of service lanes adjoining the existing roads, and for provision of green belt etc. Thus, as the constructed portion is necessary for a successful execution of the scheme of acquisition, we find no reason to accept the petitioner's prayer that his constructed portion should have been released.

In view of what has been stated herein above, we find no merit in the present writ petition, which is consequently dismissed.

(RAJIVE BHALLA)
JUDGE

30.8.2007
GS

(UMA NATH SINGH)
JUDGE